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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,454	04/05/2005	Minoru Hoshino	KA0002	3040

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EXAMINER

CHAPMAN, GINGER T

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/530,454

Applicant(s)

HOSHINO ET AL.

Examiner

Ginger T. Chapman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>04/05/2005</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The **abstract** should be in narrative form and generally limited to a single paragraph on a separate sheet **within the range of 50 to 150 words**. It is important that the abstract **not exceed 150 words** in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

Claim Objections

Claim 1 is objected to because of the following informalities: line 20 recites "...members **from** a rear elastic..." examiner is considering this a typographical error of "members **form** a rear elastic...". Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamaki et al (US 5,858,012) in view of Uchimoto et al (US 6,369,291).

With respect to claim 1, Yamaki et al disclose in Figures 1 and 2 a disposable absorbent article (fig. 1) including an absorbent article body (1) which comprises a liquid-permeable topsheet (36), a liquid-permeable back sheet (37), an absorbent core (38) disposed therebetween, and a cover sheet (19) attached to the outer surface of the liquid impermeable backsheet (37), wherein: the absorbent article body (1) has a rear waist region (7) a crotch region (8), and a front waist region (6), which are integrally arranged in the longitudinal direction of the absorbent article (fig. 2), and the crotch region (8) has leg opening portions (16); a waist opening (14); the

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absorbent article body (1) also has: one or more waist opening (14) elastic members (21) extending circumferentially around waist opening (14), a plurality of rear waist elastic members (23) that are stretchable in the widthwise direction of the article, and a plurality of front waist elastic members (23) that are stretchable in the widthwise direction; the rear waist elastic members (23) form a rear elastic area (27) in rear waist region (7); the front waist elastic members (23) form a front elastic area (26) in the front waist region (6); and the rear elastic area (27) is broader than the front elastic area (26) with respect to the longitudinal direction of the absorbent article body (1).

Yamaki et al disclose the invention substantially as claimed but do not expressly disclose the broader rear elastic area has a greater number of rear waist elastic members than are provided front waist elastic members. Uchimoto et al, at column 7, lines 5-17 teaches the ability of the stretching force, i.e. the elastic, to be changed between the rear and front waist area to accommodate wearers' having large-sized buttocks with lesser stretching force, i.e. lesser number of rear elastic members, such that the buttocks are not forcibly tightened, and for smaller-sized buttocks a greater stretching force, i.e. greater number of rear elastic members thereby to prevent gapping and leakage, and equal stretching force, i.e. equal number of elastic members, for lean wearers having small buttocks, thus disclosing the desire to have greater or lesser stretching force, i.e. greater or lesser number of elastic members, in the rear elastic area depending on the larger or smaller size of the wearers' buttocks. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the broader rear elastic area of Yamaki having greater stretching force and thus a greater number of elastic members as taught by Uchimoto in order to provide a diaper having good fit about the

buttocks since Yamaki states at col. 3, ll. 66 to col. 3, ll. 1-3 that the benefit of making a diaper with this design is that the bulginess of the diaper at the buttocks can be reduced.

With respect to claim 2, as seen in Figure 1, Yamaki et al disclose the ends of some number of the rear and front waist elastic members (23) are connected.

With respect to claim 3, as seen in Figure 2, Yamaki et al disclose the distance between the waist opening elastic members (21) and the portion of the rear waist elastic members (23) is approximately equal to the distance between each rear waist elastic member (23) and its adjacent rear waist elastic member (23).

With respect to claim 4, Yamaki et al disclose the distance between the waist opening elastic members (21) and the portion of the rear waist elastic members (23) closest the waist opening elastic members (21) is approximately equal to the distance between the waist opening elastic members (21) and the portion of the front waist elastic members (23) closest to the waist opening elastic members (21), and the absorbent core (38) is arranged so as not to overlap the front waist elastic area (26) while not overlapping at least a part of the rear elastic area (26) (col. 2, ll. 35-65; col. 1, ll. 40-51; abstract, penultimate lines).

With respect to claim 6, As seen in Figures 1 and 2, Yamaki et al disclose the distance separation between the leg opening portions (16) and the portion of the rear waist elastic members (23) closest to the leg openings is approximately equal to the distance between the leg opening portions (16) and the portion of the front waist elastic members (23) closest to the leg opening portions (16), and the absorbent core (38) is arranged so as not to overlap the rear elastic area (26) while overlapping at least a part of the front elastic area (27).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamaki in view of Uchimoto and further in view of Iwao et al (JP 09-271488).

With respect to claim 5, The combination of Yamaki and Uchimoto disclose the invention substantially as claimed but do not expressly disclose the front waist elastic members closest to the leg opening is located closer to the leg opening than the portion of the rear waist elastic member closest to leg opening. As seen in Figure 1, Iwao et al teach the front waist elastic members closest to the leg opening portions is located closer to the leg opening portions than the rear waist elastic members and, additionally, as depicted in Figures 5, teach the front and rear waist elastic members located at approximately equal distance to the leg opening. In view of this known teaching it would therefore have been obvious to one having ordinary skill in the art at the time the invention was made to form the either the front or the rear waist elastic members located closer to the leg openings since both configurations perform the identical function of conforming the diaper to the abdomen of the wearer and it has been held that rearranging parts of an invention involve only routine skill in the art. *In re Japikse*, USPQ 70.

The specification contains no disclosure of either the critical nature of the claim limitations nor any unexpected results arising therefrom, and that as such the limitations were arbitrary and therefore obvious. Such unsupported limitations cannot be the basis for patentability, since where patentability is said to be based upon particular dimensions or another variable in the claim, the applicant must show that the chosen variables are critical. *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ 2d 1934 (Fed. Cir. 1990). One having ordinary skill in the art would be able to determine the ideal waist elastic configuration for a particular article.

With regard to the limitation of the absorbent core arranged so as to not overlap the rear elastic area while overlapping at least a part of the front elastic area, see claim 6, *supra*.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Umebayashi (US 6,554,815) discloses a diaper having a plurality of rear and front waist elastic members (1) and an absorbent core arranged so as not to overlap the elastic members area (fig. 1).

Although this reference is pertinent prior art, it was not used to reject any claims in the first Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T. Chapman whose telephone number is (571) 272-4934. The examiner can normally be reached on Monday through Friday 8:30 a.m. to 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ginger Chapman
Examiner, Art Unit 3761
04/28/06



TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

